



# **MONTGOMERY COUNTY EXECUTIVE ORDER**

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Cable Television Rate Order (2011 & 2012)	Executive Order No. 48-13	Subject Suffix
Department Technology Services	Department No.	Effective Date 2/27/2013

**ORDER OF THE COUNTY EXECUTIVE SETTING CABLE  
TELEVISION RATES FOR EQUIPMENT AND SERVICES PURSUANT TO  
FCC FORMS 1205 AND 1240 FILED OCTOBER 1, 2010 (FOR RATE YEAR 2011)  
AND FCC FORMS 1205 AND 1240 FILED OCTOBER 1, 2011 (FOR RATE YEAR 2012)**



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## I. BACKGROUND

1. Montgomery County, Maryland ("County"), has authority to regulate cable operator rates for basic service,<sup>1</sup> equipment and installation in certain portions of the County<sup>2</sup> under Section 623 of the Cable Communications Policy Act of 1984, 47 U.S.C. § 543, as amended ("Cable Act"), and Montgomery County Executive Regulation No. 08A.29.02 (Oct. 12, 1993) ("Executive Regulation" or "ER"). The County's authority to regulate these rates is limited to those areas of the County in which Comcast of Potomac, LLC ("Comcast") has not been determined by the Federal Communications Commission ("FCC") to be subject to "effective competition." The FCC has developed forms that an operator subject to regulation must file to justify service and equipment rates.

2. On or about October 1, 2010, Comcast Cable Communications, Inc. ("Comcast"), filed with the County FCC Form 1205, "Determining Regulated Equipment and Installation

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<sup>1</sup> Basic cable service is the lowest level of video service offered by an operator (typically that is the level of service that primarily includes local broadcast stations and local public, educational and government access channels). In this Order, the County refers to basic service as the "Basic Service Tier" and a subscriber who receives the Basic Service Tier and no other tiers of service as a "Basic Only" subscriber. Comcast uses the term "limited basic service" on its rate cards.

<sup>2</sup> The County currently regulates rates in Barnesville, Chevy Chase Section 3, Chevy Chase Village, Laytonsville, Poolesville and Washington Grove but also notes that on October 16, 2012, Comcast filed a new effective competition petition with the FCC seeking additional deregulation in Chevy Chase Section 3, Chevy Chase Village, Laytonsville, and Poolesville. If Comcast's petition for these areas is granted, the only remaining rate regulation areas in the County will be in Barnesville and Washington Grove.



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Costs, 'Equipment Form'" ("October 2010 Form 1205") for those portions of the County where rates remain subject to regulation, seeking the County's approval of a change in the maximum permitted rates for equipment and installation. At the same time Comcast filed FCC Form 1240, supporting the rates it charges for its Basic Service Tier (collectively, the "October 2010 Forms").

3. The Office of Cable and Broadband Services received and preliminarily reviewed the October 2010 Forms and published notice that the filings were available for public review and comment. The October 2010 Forms set forth Comcast's requested service and equipment rates for the calendar year 2011. The County has one year from the date filed to approve, modify or deny Comcast's October 2010 Forms filing.

4. The County's financial consultant, Ashpaugh & Sculco, CPAs, PLC ("Consultant"), reviewed the October 2010 Forms on behalf of the County. Based on that review, Consultant prepared a letter report titled "Review of the FCC Forms 1240 and 1205 of Comcast of Maryland, Inc. Filed with Montgomery County, Maryland on or about October 1, 2010."

5. On September 8, 2011, the County delivered to Comcast for comment a courtesy draft of its proposed Rate Order, including the Consultant Report. Comcast asked for the opportunity to present additional information to the County to support its rate filing and the County permitted such additional information to be provided.



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6. On or about October 1, 2011, Comcast filed with the County FCC Form 1205, “Determining Regulated Equipment and Installation Costs, ‘Equipment Form’” (“October 2011 Form 1205”) for those portions of the County where rates remain subject to regulation, seeking the County’s approval of a change in the maximum permitted rates for equipment and installation. At the same time Comcast filed FCC Form 1240, “Updating Maximum Permitted Rates for Regulated Cable Services (October 2011 Form 1240”) supporting the rates it charges for its Basic Service Tier (collectively, the “October 2011 Forms”).

7. The Office of Cable and Broadband Services received and preliminarily reviewed the October 2011 Forms and published notice that the filings were available for public review and comment. The October 2011 Forms set forth Comcast’s requested service and equipment rates for the calendar year 2012. The County has one year from the date filed to approve, modify or deny Comcast’s October 2011 Forms filing.

8. The County’s financial consultant, Ashpaugh & Sculco, CPAs, PLC (“Consultant”), reviewed the October 2011 Form 1205 and the Form 1240 on behalf of the County. Based on that review, Consultant prepared an addendum to his letter report titled “Review of the FCC Forms 1240 and 1205 of Comcast of Maryland, Inc. Filed with Montgomery County, Maryland on or about October 1, 2010” in which he addressed the October 2011 Forms, and related matters.



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9. Over the next several months, Comcast provided additional information and engaged in discussions with the County about the October 2010 Forms and the October 2011 Forms. The County, in conjunction with Consultant reviewed and considered the additional information. To facilitate further discussion and exchange of information, Comcast and the County agreed to extend the deadline for County action several times, lastly to February 28, 2012. The County and Consultant determined that both rate year filings raised the same concerns and that it would be prudent to prepare a single rate order addressing both rate years, 2011 and 2012. Several drafts were presented to Comcast for review and discussion.

10. FCC rules place the burden on the cable operator to prove that its rates for its basic service tier and equipment are reasonable under applicable federal law and regulations. 47 C.F.R. § 76.937(a). The County has provided Comcast with ample opportunity to provide the necessary support for its rates. To the extent Comcast has failed to carry its burden of proof, the County may reject Comcast's rates, set rates itself based on the best available information, and order refunds. *See, e.g., Comcast Cablevision of Tallahassee, Inc.: Appeal of Local Rate Order of City of Tallahassee, Fla.*, DA 95-1561, 10 FCC Rcd 7686 at ¶¶ 28-29, 37, 48-49, and 54 (1995) ("Tallahassee").



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## II. FINDINGS AND CONCLUSIONS

### A. **The Form 1240 – Regulation of Service Rates**

11. The Form 1240 establishes a Maximum Permitted Rate for the basic service tier based on a formula established by the FCC. So long as the rate that the operator proposes to charge in the Form 1240 (the “Operator Selected Rate” or “OSR”) does not exceed the Maximum Permitted Rate, the rate cannot be reduced by the County. In addition, the operator calculates its “external costs,” such as the cost of providing support for public, educational and government access. These amounts may be itemized on the bill. Consultant reviewed the Form 1240 based on the information available to him and concluded that it did not exceed the Maximum Permitted Rate, and that the company’s calculation of external costs was acceptable. Based on this analysis, and the information reviewed by the Consultant, the Operator Selected Rate for the Basic Service Tier that Comcast proposed to charge in the Form 1240 in each of 2011 and 2012 may be accepted. Although the County is accepting the OSR in each of the Forms 1240, the County has raised with Comcast the concern about HD channel delivery described below.

12. Basic Service Tier Delivered To Certain Subscribers Without Viewable HD Channels. Every subscriber of a regulated cable system must subscribe to the basic service tier in order to subscribe to any other tier of video programming or to purchase any other video





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programming. 47 C.F.R. § 76.920. Comcast's Basic Service Tier includes digital and HD channels.

13. All Comcast subscribers pay for the Basic Service Tier even if they choose to subscribe to any level of service above basic. Under Comcast's proposed rate structure, however, Comcast subscribers who choose to take additional services beyond the Basic Service Tier lose access to Basic Service Tier HD channels unless they pay an HD Technology Fee or an HD Additional Outlet Fee.<sup>3</sup> Comcast's system and equipment does not allow any of the Basic Service Tier HD channels to be passed through to any non-HD subscribers who do not pay these additional HD Fees.

14. Comcast submits that it is not economically feasible at this time for Comcast to make the necessary technical adjustments to its system and equipment to ensure the pass through of HD Basic Service Tier channels to all subscribers who choose to take additional services beyond the Basic Service Tier and decline to pay the HD Technology Fee or the HD Additional Outlet Fee, particularly given the limited number of subscribers in Montgomery County subject to rate regulation, and Comcast's belief (based on an absence of subscriber requests) that very few (if any) of its subscribers are interested in this potential service option. In contrast, the County contends that there may be subscribers who for financial reasons may opt not to purchase

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<sup>3</sup> Or order another service, such as Digital Video Recorder (DVR) Service or AnyRoom DVR Service, which includes the HD Technology Fee for the primary outlet.



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HD services when purchasing tiers above the basic level, but who would nevertheless want to watch the HD local broadcast channels in the Basic Service Tier, particularly live sporting events.

15. Consultant expresses the view that this situation is tantamount to deleting the HD channels from the Basic Service Tier line up for customers who choose additional service tiers above basic. Consultant recommends that the County order Comcast to credit customers who choose to take additional non-HD services above the Basic Service Tier, and do not pay the HD Technology Fee or HD Additional Outlet Fee for the loss of Basic Service Tier HD channels until such time as Comcast invests in technology to enable Comcast to pass through the full Basic Service Tier, including HD channels, to these subscribers.

16. Consultant has identified a potential methodology to calculate the proposed service credit,<sup>4</sup> but Comcast disagrees with the underlying analysis and methodology.

17. The County believes that Comcast's practice of delivering the Basic Service Tier without viewable HD channels to subscribers who choose to take additional non-HD services above the Basic Service Tier and requiring them to pay an HD Technology Fee and/or an HD Additional Outlet Fee to view those HD channels may be inconsistent with FCC rules, 47 C.F.R. § 76.920. However, this issue and proposed solution raises a novel legal issue for which there is

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<sup>4</sup> See Consultant's Letter Report and Addenda in Attachment 1 hereto.



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very little legal precedent. For that reason, at this time the County has decided not to order any service credits during the rate periods covered by this Order. The County will continue to monitor the situation to determine whether and what action (if any) should be taken in the future to address this concern.

## **B. The Form 1205 – Regulation of Equipment Rates**

18. The purpose of Form 1205 is to allow the cable operator to recover the cost of regulated equipment and installations. Comcast has chosen to determine its equipment rates based on the type of service the subscriber receives. For example, all converters available to Basic Only subscribers are aggregated into one cost category and identified as the “Basic Only” converter rate. This is allowed under the FCC’s rules. (*See* 47 C.F.R. §76.923 (c)).

19. The Consultant identified two issues of concern regarding Comcast’s calculation and application of equipment rates to subscribers. The first affects Basic Only subscribers. The second affects other subscribers. While the Consultant did not challenge the rates set for other equipment, the Consultant did recommend that the County adopt the position that Comcast could charge no more than the rate supported by its rate filings for rate years 2011 and 2012.

20. Basic Only HD Converters. Under the FCC rules, an operator may establish the equipment rate for Basic Only equipment in one of two ways: the FCC rule allows an operator to calculate and select the Basic Only rate either by including costs associated with all converters provided to Basic Only subscribers and developing a melded rate; or by developing a single rate



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for equipment for Basic Only customers based on costs associated with the least expensive model of equipment. 47 C.F.R. § 76.923(c)(2). Comcast has advised the County that it chose a different approach. It has one equipment rate for a digital converter<sup>5</sup> that is offered to Basic Only subscribers. HD channels are not viewable using this digital converter. Comcast charges another higher rate for an HD converter that is leased to Basic Only subscribers who opt to receive HD channels.

21. The Operator Selected Rate (OSR) for most Basic Only converters is \$0.95 per month for 2011, and \$0.60 per month for 2012. The rate charged to Basic Only customers for the HD converter was \$2.75 (effective January 1, 2011), and \$2.15 (effective January 1, 2012).

22. Based on the FCC rules, and Comcast's election to calculate equipment rates on a service tier basis, the County believes that Comcast should therefore be limited to charging Basic Only subscribers \$0.95 per month for rental of any converter, including the HD converter for the 2011 rate year, and \$0.60 per month for 2012, including the HD converter for the 2012 rate year.

23. Comcast disagrees with the County, and contends that its alternative approach is acceptable under the FCC rules and beneficial to most Basic Only subscribers. Comcast notes

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<sup>5</sup> Comcast has advised the County that it now only purchases digital equipment with HDTV capabilities. However, Comcast continues to have deployed both digital equipment with HDTV capabilities and digital equipment without HDTV capabilities into service in the County. In this Order, unless specified otherwise, references to "digital" equipment are intended to refer to equipment without HDTV capabilities. Equipment with HDTV capabilities is referred to as HD equipment.



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that it might otherwise choose to charge a “melded” rate, which would result in higher charges to subscribers who opt to receive standard digital (non-HD) converters. Comcast further notes that there are few subscribers at issue, and suggests that, if the County rejects Comcast’s initial Basic Only equipment calculations, Comcast should be allowed to recalculate Basic Only equipment charges based on the methodologies accepted by the County. The County agrees that Comcast has the right to charge a melded rate and offered Comcast the opportunity to determine a melded rate. Comcast, however, declined to recalculate and create a melded rate. Therefore, the FCC rule requiring a single rate applies and the County orders a refund for the excess charges, as specified in the attached Rate Agreement.

24. Equipment Charges to Other Subscribers/Adoption of “HD Technology Fee”. All subscribers must subscribe to the Basic Service Tier. Subscribers then have an option to purchase other tiers in addition to the Basic Service Tier. Comcast encrypts all channels other than those offered on the Basic Service Tier. The vast majority of subscribers who select services above the Basic Service Tier also lease equipment from Comcast.

25. The County regulates rates for equipment used in connection with the reception of the Basic Service Tier. Because Comcast customers use the equipment they lease from Comcast to receive the Basic Service Tier, the County regulates most equipment rates. The equipment rates charged to customers who take more than the Basic Service Tier are calculated separately from Basic Only service rates, as the FCC regulations require.



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26. Comcast's filed FCC Form 1205 for 2011 computes a rate for the HD converter of \$8.02 per month and an OSR of \$8.00, but no subscriber could obtain an HD converter and use it for HD reception at that rate.<sup>6</sup> Likewise, the FCC Form 1205 for 2012 computes a rate for the HD converter of \$6.72 per month and an OSR of \$2.15. Only a Basic Only customer can obtain and use Comcast's HD converter for HD reception by paying the OSR of \$2.15, (a rate which, as discussed above at paragraph 22, the County believes is not consistent with FCC rules and should be \$0.60). For subscribers other than Basic Only, Comcast claims to have ceased to charge any "equipment" fee at all for HD converters. Effective October 15, 2010, Comcast implemented what it describes as the "HD Technology Fee" and the "HD Additional Outlet Service Fee" (together the 'HD Fees'). The HD Fees replaced the then-existing HD equipment charges.<sup>7</sup> That is, Comcast dropped from its rate card the then-applicable charge of \$9.25 per

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<sup>6</sup> As noted earlier Basic Only subscribers were able to get an HD converter at \$2.75 (a rate which as discussed should be \$0.95). As noted in footnote 5, Comcast may deploy HDTV-capable converters to other (non Basic Only) subscribers at a rental rate of \$8.00 but the HD functionality would not be activated.

<sup>7</sup> In a September 13, 2010 letter to the County Comcast stated, among other things, that the company was notifying customers that the "equipment rental fee" was being "renamed" the HD Technology Fee. See Attachment 2. In addition, Consultant went to the Comcast website in September, 2011, to determine how Comcast was describing its charges to persons who were ordering service from it. As the attachment to the Consultant's letter report shows, a potential subscriber is advised that he or she may "upgrade to an HD Receiver" for \$9.25. Subscribers are also advised that the \$9.25 charge is the "monthly rental fee." A separate fee is charged for each box rented. The "HD Technology Fee" and "HD Additional Outlet Service Fee" are not mentioned.



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HD converter and instituted a like charge of \$9.25 for the HD Fees. The HD Fees were later increased to \$9.95, effective March 1, 2012. The HD Fees each include one HD converter and remote.

27. If the HD Fees are equipment fees, they are subject to regulation because the converter is used to receive the Basic Service Tier. Comcast previously claimed the HD Technology Fee is “a ‘whole house’ fee that enables customers with HD compatible equipment to receive HD services on all outlets in the home.”<sup>8</sup> However, Comcast’s explanation is inconsistent with its rate card, which lists the HD Technology Fee as an “HD Technology Fee – Primary Outlet” and which also lists an “HD Additional Outlet Service Fee”. Comcast stated in its most recent response to the County that both the “HD Primary Outlet” and the “HD Additional Outlet” fees include provision of an HD converter. Comcast’s 2011 and 2012 Rate Cards both state that the HD Additional Outlet fee “includes Digital Converter with HDTV capabilities and Remote.”

28. The FCC has indicated that an operator’s description of charges are to be reviewed from the subscribers’ perspective In the Matter of MARCUS CABLE ASSOCIATES, L.L.C. d/b/a Charter Communications; Appeal of Local Rate Order of the City of Burbank, CA, 16 FCC Rcd 3952, 3954 (FCC 2001). Based on the facts that: (i) the company told subscribers

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<sup>8</sup> See Attachments 2-3.



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that it had simply renamed its equipment charges an “HD Technology Fee” and “HD Technology Outlet Service Fee”; (ii) Comcast’s on-line ordering form indicates that a customer is ordering equipment in exchange for the HD Fees, and (iii) Comcast’s rate card states that the HD Additional Outlet fee includes an HD converter and remote, the Consultant concluded that the HD Technology Fee and HD Additional Outlet Service fee are in fact fees for equipment.

29. Comcast maintains, however, that even though it provides an HD converter and remote at no additional charge to subscribers who pay the HD Fees, the HD Fees constitute unregulated service fees. The company further notes that a Comcast subscriber who pays the HD Fees but does not take the associated HD equipment from Comcast receives a monthly equipment credit for the unused equipment.<sup>9</sup> Comcast has not clearly identified to the County, what “service” it is providing in exchange for the HD Fees. For example, the County notes that customers who have already paid for equipment as part of their bundled price (such as Digital Economy and Digital Starter subscribers) pay the same HD Technology Fee or HD Additional Outlet fee as Digital Preferred and Digital Premier customers whose packages *do not* include a converter and remote in a bundled price for service and equipment (but receive one in exchange for the HD Fee). Also, according to Comcast’s rate cards, for any digital service subscribers

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<sup>9</sup> See *infra* paragraphs 37-38. The County finds that Comcast offers a lower credit for use of subscriber-owned equipment than a subscriber has to pay to lease Comcast owned equipment.





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who also subscribe to Digital Video Recorder (DVR) Service and who have “a HDTV capable television set and Digital Converter with both HDTV and DVR capabilities”, or who subscribe to AnyRoom DVR Service, the HD Technology Fee is “included on the primary outlet,” But an “HD Additional Outlet Fee” is charged for other outlets. Thus, Comcast’s “whole house” explanation is not consistent with its rate cards, and most importantly, its claim is inconsistent with its own representations to the County and to customers. Based on the facts of this case, the Consultant concluded that the HD Fees should be treated as regulated fees for equipment.

30. The County shares Consultant’s view that the HD Fees are an equipment charge. This situation is not like the decision in *Comcast Cable of Indiana/Michigan/Texas, Inc. (Irving, TX)*, 19 FCC Rcd 16344 (2004) (“*Irving Order*”), where the fee for an additional outlet fell only on subscribers in connection with their receipt of unregulated services. The HD Fees fall on subscribers to service tiers above the Basic Service Tier in connection with the use of the HD converter to receive the Basic Service Tier. What Comcast is doing is also different than what is being done by other providers who offer what Comcast describes as an HD service fee. None of those providers (some of which are not subject to the same regulatory rules as Comcast) appear to have completely ceased to charge any fee for equipment as Comcast claims to have done in



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connection with the implementation of an HD Fee, and Comcast points to no evidence that these other providers simply “renamed” equipment charges.<sup>10</sup>

31. As a consequence, and because the equipment is used to receive the Basic Service Tier, Comcast must justify its rate. The Consultant’s report indicates that the HD equipment rate justification in Comcast’s filing for the 2011 rate year supports an HD converter rate of \$8.02, and an OSR of \$8.00, and the filing for the 2012 rate year supports, at most, an HD converter rate of \$6.72, and an OSR of \$2.15. Because these are the only rates justified, these are the only rates that may be charged for HD equipment in the regulated areas to customers other than Basic Only customers (who are eligible for a lower rate as discussed above). Under FCC rules, in this circumstance the operator would be ordered to refund any charge for an HD converter that is higher than the OSR, *i.e.*, \$8.00 in 2011, and \$2.15 in 2012, whether designated as an HD converter charge, or a HD Technology Fee or HD Additional Outlet Service Fee. The refund is tied to the OSR because that is the rate the operator selected and either failed to implement it, or was using that rate for other subscribers in connection with the equipment in question. Thus,

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<sup>10</sup> Comcast describes what others are doing as follows: “For example: DirecTV charges a \$10 HD Access Fee, plus a monthly \$5 equipment fee per outlet. DirecTV customers may also be required to pay \$99 to \$199 upfront on an equipment lease, depending on features supported by the equipment. DISH charges a \$10 HD Enabling Fee, plus a monthly equipment fee of \$7 to \$14 depending on equipment. AT&T U-Verse charges a \$10 HD Technology Fee, plus a \$7.00 Receiver Fee per additional outlet. Moving to a similar model simplifies comparison shopping by consumers, and permits us to compete more effectively on price.” September 13, 2010 Letter.



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applying principles of fairness and non-discrimination among subscribers, all subscribers should receive the same rate. However, as noted earlier at paragraph 26, the equipment was not available to any subscribers at the OSR. Comcast contends that because it is permitted to charge up to the MPR, it should not be ordered to refund to subscribers additional fees based on a lower OSR that it voluntarily selected. The County recognizes that subscribers have benefited because Comcast has voluntarily opted to charge lower rates than the maximum it is permitted to charge by law. Had Comcast known that the HD Fees would be deemed equipment fees in this Order, it may have selected a higher OSR. Thus, in these particular circumstances, the County is persuaded that strict adherence to the principle that all subscribers should receive the same rate is not warranted and that any refund ordered should be based on Comcast's MPR, that is \$8.02 in 2011 and \$6.72 in 2012.

32. In addition, if any subscriber who obtains a service package including a converter, is also charged an HD Technology Fee, the subscriber is being double-charged for equipment and is entitled to be refunded the full HD Technology Fee.

33. Other Bundled Equipment and Services – Digital Additional Outlets and AnyRoom DVR Services. Subscribers to digital services either receive one converter and remote in their bundle (such as Digital Economy and Digital Starter subscribers) or must lease equipment separately (such as Digital Preferred and Digital Premier subscribers). During the course of 2011, Comcast bundled together digital equipment and additional outlet service



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charges that were previously charged separately. A \$9.25 digital additional outlet fee initially *did not* include a digital converter; by the end of 2011, the fee *included* a digital converter. The fee was increased to \$9.95 effective March 1, 2012. It was the County's understanding that the additional outlet fee previously fell only upon customers who received unregulated digital services. The *Irving* cases make it clear that such additional outlet charges are permitted, but only if the charges fall only on customers in connection with the use of the additional outlet to view unregulated services. As restructured, the charges now appear to combine unregulated service charges with regulated equipment charges (that is, charges for equipment used to receive the Basic Service Tier at additional outlets). Comcast may bundle these services and equipment in a package (for example to offer a discount), but the FCC's rate rules require that Comcast also make regulated equipment available at standalone rates separate from unregulated services. Comcast has not done that. A \$2.75 digital converter charge is justified for 2011, and \$2.15 for 2012. Comcast must make the digital converters available to subscribers at these OSRs, and separately provide a rate for the additional outlet service. Likewise, it appears that Comcast's AnyRoom DVR Service (both Primary Outlet and Additional Outlet) has been bundled with equipment (a Digital Converter with DVR Service capabilities). However, there is no standalone rate offered for a Digital Converter with DVR Service capabilities or for AnyRoom DVR Service without equipment. For the same reasons described in paragraph 34 above, the MPR is used for the HD equipment. Thus, a \$8.02 HD DVR converter charge is justified for 2011, and \$6.72 for



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2012. The County believes that Comcast must make the HD DVR converters available to subscribers at these MPRs, and separately provide a rate for DVR service.

34. Additional CableCARD Issues Presented By the Filing. This Order addresses only charges within regulated areas of the County. However, the HD Fees, Additional Outlet fees and DVR service fees, and other bundled services and equipment issues are potentially relevant throughout the County.

35. For almost two decades, the FCC has been working to adopt rules that would allow consumers to purchase converters (or television sets that include converter functionality) from third parties as an alternative to renting equipment from the cable operator. In order to ensure that subscribers had that option, but could only receive signals for which they had paid, operators were directed to separate security functions from other navigation functions. "CableCARD" technology developed as an initial solution which would allow a security card to be inserted into converters purchased from third parties. With a CableCARD, third party converter boxes could then be used to receive cable services which did not require interactivity.<sup>11</sup> The FCC has recently recognized, however, that a market for purchasing CableCARDs has been slow to develop and newer, interactive, third party alternatives to operator-supplied converters

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<sup>11</sup> CableCARDs are an early "one-way" technology which does not allow consumers to use interactive features, such the electronic program, on-demand and pay-per-view features which require two-way interactivity to process the customer selection.



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will not develop if operators ostensibly provide converters at no charge and then recover those costs through some other fee.

36. On August 8, 2011, a new FCC rule went into effect that requires operators to reduce rates to customers who use equipment that serves as an alternative to the operator-supplied converter. This could include, as examples, a converter with a CableCARD slot, a television that takes a CableCARD, and some computer devices that accept CableCARDS. 47 C.F.R. § 76.1205(b)(5). The rate discount is required to be “equal to an amount not less than the monthly rental fee reasonably allocable to the lease of the operator-supplied navigation device included with that offer.” *Id.* The FCC rules also specify that in order to be “reasonably allocable,” the amount of the discount must be consistent with one or more of the three factors: (i) an allocation determination approved by a local, state or Federal government entity; (ii) the monthly lease fee as stated on the cable system rate card for the navigation device when offered by the cable operator separately from a bundled offer; and (iii) the actual cost of the navigation device amortized over a period of no more than 60 months. *Id.*

37. Comcast has structured its product offerings such that there are very limited opportunities for customers to rent equipment from Comcast separate from a bundled offer (of programming services and equipment, or of other services and equipment), which makes it difficult for consumers readily to compare the costs of purchasing equipment versus leasing from Comcast. In addition, for those customers that do choose to use their own equipment, the way



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Comcast has structured its offerings may serve to underprice the customer owned equipment credit. For example, Comcast's 2011 rate card shows that a \$2.95 "Customer-Owned Video Equipment Credit" is available to customers who subscribe to a package that includes a converter and a remote but choose to use their own equipment, not Comcast's. This is Comcast's rate for a digital converter and a remote. However, this same credit applies to any customer-owned equipment, whether a digital, HD or HD DVR converter. As discussed earlier, Comcast's October 2010 Forms arguably justify a much higher credit of \$8.02 for customer-owned HD equipment. The 2012 rate card show a credit of \$2.50, not a rate at which any subscriber can obtain the equipment from Comcast. Again, the corresponding rate filing, Comcast's October 2011 Forms, would arguably justify a much higher credit of \$6.72 for customer-owned HD equipment.

38. This raises concerns as to whether Comcast (and potentially other operators) are properly crediting Montgomery County subscribers who opt to purchase their own equipment. This is an important issue which can directly and negatively impact efforts to create a competitive retail market for customer equipment. The County has actively engaged on this issue both at the FCC and at the Maryland Legislature. The County has urged the FCC to require operators to make their equipment available for sale<sup>12</sup> and has supported Maryland House Bill

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<sup>12</sup> E.g., *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and*



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1203 (introduced in 2011) which would, if enacted, require cable operators to offer their cable converter boxes for sale to subscribers, and prohibit discrimination on the price of cable service based on whether the subscriber owns, leases or rents the cable converter box. The County believes that Comcast should credit its subscribers for use of subscriber-owned equipment at the same rates that they would have had to pay to lease similar Comcast-owned equipment.

## C. Findings

39. The County has significant concerns over certain components of Comcast's October 2010 Forms and its October 2011 Forms.

40. The County recognizes that Comcast disagrees with the County's concerns, but has voluntarily proposed certain rate credits that will benefit Comcast's subscribers in rate regulated portions of the County without further delay or uncertainty to resolve the current rate review.

41. The County finds that Comcast's proposed rate credits, as set forth in the attached Rate Agreement, provide substantial benefits to regulated subscribers and constitute a reasonable resolution of the County's rate regulation review of Comcast's October 2010 Forms and its October 2011 Forms.

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*Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Reply Comments of Montgomery County (filed June 28, 2010).





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### III. ORDERING CLAUSES

IT IS THEREFORE ORDERED THAT:

42. The County accepts Comcast's October 2010 Forms, and Comcast's October 2011 Forms, and the rates charged by Comcast during the time period covered by those rate filings, provided that Comcast executes and abides by the Rate Agreement attached hereto.

43. The rates set herein will govern until Comcast lawfully implements a further rate change pursuant to applicable law. Any subsequent order by the FCC relieving the County of any rate regulation authority shall not relieve Comcast of its obligation to provide rate refunds owed during the period that the County has such authority to regulate rates.

44. Pursuant to ER § 5.2, Comcast shall file with the County within ninety (90) days from the effective date of this Order a certification, signed by an authorized representative of Comcast, stating whether Comcast is complying fully with all provisions of this Order, describing in detail the precise measures being taken to implement this Order including distribution of credits to subscribers. Comcast shall file with the County within two hundred and forty (240) days from the effective date of this Order a certification, signed by an authorized representative of Comcast, stating whether Comcast has complied fully with all provisions of this Order and completed the distribution of credits to subscribers. Comcast will maintain such records as are necessary to ensure that credits may be issued to the appropriate customers.



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45. Comcast shall not charge any rates for regulated equipment or installation higher than the rates set herein, nor increase those rates, nor impose on subscribers any other charges for regulated equipment or installation not specified herein or in the County's previous rate orders, unless such charge is first filed with and approved by the County, in accordance with applicable law and regulations, including but not limited to the notice requirements imposed by 47 C.F.R. § 76.1603(d), or as otherwise expressly permitted by applicable law and regulations.

46. Comcast may charge rates less than the maximum rates indicated above for regulated equipment, as long as such rates comply with applicable law and are applied in a uniform and nondiscriminatory manner, pursuant to federal, state, and local laws and regulations.

47. The findings herein are based on the representations of Comcast. Should information come to the County's attention that these representations were inaccurate in any material way, the County reserves the right to take appropriate action. This Order is not to be construed as a finding that the County has accepted as correct any specific entry, explanation or argument made by Comcast not specifically addressed herein.

48. This Order constitutes the written decision required by 47 C.F.R. § 76.936(a).

49. To the extent that the Executive Regulation would impose deadlines or hearing requirements more stringent than those observed with respect to this process, and waiver of such requirements would be consistent with applicable FCC regulations and would not cause



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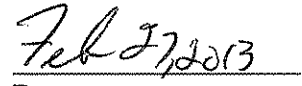
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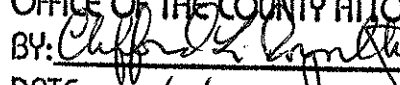
substantial harm to any party, the County Executive hereby waives such requirements, pursuant to ER § 6.1(c).

50. This Order shall be effective immediately upon its approval by the County Executive, pursuant to ER § 4.1.

51. This Order shall be released to the public and to Comcast, and a public notice shall be published stating that this Order has been issued and is available for review, pursuant to ER § 4.1 and 47 C.F.R. § 76.936(b).

  
Isiah Leggett  
County Executive

  
Date

APPROVED AS TO FORM AND LEGALITY  
OFFICE OF THE COUNTY ATTORNEY  
BY:   
DATE: 2/27/13